

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TANA RAE ANNE SHERLOCK

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

No. CV-12-5036-CI

ORDER DENYING PLAINTIFF'S
MOTION TO AFFIRM
FAVORABLE PORTION OF
DECISION ON REMAND

---- ACTION REQUIRED ----

Before the court is Plaintiff's Motion to Affirm Favorable Portion of Decision on Remand. ECF No. 9. Plaintiff is represented by attorney David Lybbert; Defendant is represented by Special Assistant United States Attorney Daphne Banay. The parties have consented to proceed before a magistrate judge. ECF No. 8.

BACKGROUND

On May 25, 2012, for good cause shown (inaudible recording of administrative hearing) the court granted the parties' stipulated Motion to Remand pursuant to Sentence Six of 42 U.S.C. § 405(g). ECF No. 7. Judgment was not entered pending the outcome of the new hearing and new decision. On remand, a *de novo* hearing was held and the ALJ issued a new decision on April 26, 2013. ECF No. 11, *Exhibit 1*. In her decision, ALJ Palachuk found Plaintiff has been disabled under the Social Security Act beginning July 10, 2012. *Id.* at 13.

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1 Plaintiff is requesting entry of a final judgment based on the ALJ's decision
2 that she has been disabled since July 10, 2012. ECF 9 at 1. Defendant objects to
3 entry of judgment at this time because the ALJ's decision as presented is not a final
4 decision and, therefore, not reviewable by this court under § 405(g). ECF No. 11.
5 Plaintiff has not replied to Defendant's objection.

6 DISCUSSIN

7 The Social Security Act provides that judicial review of an administrative
8 decision is governed exclusively by 42 U.S.C. § 405(g) and only after full
9 exhaustion of administrative remedies. *See Kildare v. Saenz*, 325 F.3d 1078, 1082
10 (9th Cir. 2003) (claimant may obtain judicial review "after any final decision of the
11 Commissioner"). Here, Plaintiff is asking the court to affirm the favorable portion
12 of the ALJ's decision and enter judgment so she may petition for EAJA fees. She
13 also indicates that those portions of the decision that were not favorable were
14 presented to the Appeals Council for review on May 21, 2003, ECF No. 9 at 1.
15 Plaintiff offers no legal authority for judicial review of a portion of an ALJ
16 decision (favorable or unfavorable) that has not been exhausted.

17 As explained in the ALJ's "Notice of Decision – Partially Favorable," if a
18 claimant disagrees with the ALJ's decision, she or her representative may submit
19 written exceptions to the Appeals Council. ECF No. 9-1 at 1-2. Once a claimant's
20 written exceptions are submitted, the Appeals Council considers the entire case,
21 even the parts with which a claimant agrees. It may address the exceptions and
22 explain why no change is warranted; or it may assume jurisdiction and make a
23 new, independent decision, or remand the case to an ALJ for further proceedings.
24 The ALJ's decision in its entirety does not become final for purposes of judicial
25 review until the Appeals Council decides what to do and issues a notice to the
26 claimant that explains its actions. Where exceptions are filed with the Appeals
27 Council, until the Appeals Council renders its decision, administrative remedies

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1 are not exhausted. 20 C.F.R. § 416.1484(a) and (b) (*Appeals council review of*
2 *administrative law judge decision in a case remanded by Federal court*).

3 Plaintiff admits she has filed exceptions with the Appeals Council.
4 However, she has not provided evidence of a final decision by the Appeals
5 Council. Without proof of exhaustion of administrative remedies, this court does
6 not have jurisdiction to review or enter a final judgment on any portion of the
7 ALJ's decision. Accordingly, Plaintiff's Motion to Affirm Favorable Portion of
8 Decision on Remand, ECF No. 9, is **DENIED**. This matter remains remanded to
9 the Commissioner under Sentence Six of 42 U.S.C. § 405(g).

10 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
11 Order and forward copies to counsel. The file shall remain open.

12 DATED July 10, 2013.

13
14 S/ CYNTHIA IMBROGNO
15 UNITED STATES MAGISTRATE JUDGE
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